



The Comptroller General
of the United States

Washington, D.C. 20548

Jayne

Decision

Matter of: Harold A. Gibson - Leave Transfer - Death of
Leave Recipient

File: B-234849

Date: September 21, 1989

DIGEST

Under the Temporary Leave Transfer Program for fiscal year 1988, the retroactive substitution of donated annual leave for leave without pay after the death of a leave recipient was improper. Any unused donated leave remaining to the credit of a leave recipient after his death should have been restored to the leave donors. In addition, the payment of compensation resulting from the retroactive substitution was erroneous but may be subject to waiver.

DECISION

This is in response to a request from Ms. Jean W. Baines, Acting Assistant Director for Administration, Minerals Management Service (MMS), United States Department of the Interior, for a decision concerning the propriety of retroactively substituting under the Temporary Leave Transfer Program for fiscal year 1988 donated annual leave for leave without pay after the death of a leave recipient. For the reasons discussed below, we find that the retroactive substitution of donated leave for leave without pay after the death of a leave recipient was improper. In addition, the payment of compensation resulting from the retroactive substitution was erroneous but is subject to waiver.

BACKGROUND

On July 8, 1988, MMS approved the application of Mr. Harold A. Gibson, an employee in the Alaska Office of the MMS, to become a leave recipient under the fiscal year 1988 Temporary Leave Transfer Program. At that time, Mr. Gibson was suffering from a severe illness and was undergoing extensive treatment. A few days later, on July 11, 1988, the Alaska office sent out a formal solicitation for donations of leave on behalf of Mr. Gibson, and

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132 hours of annual leave were donated to Mr. Gibson by his fellow employees.

Unfortunately, on July 14, 1988, Mr. Gibson died due to complications of his illness. After being notified of Mr. Gibson's death, the Alaska office declined further offers of donations for Mr. Gibson. In addition, the Alaska office contacted the employees who donated leave to determine whether they wished to withdraw their donations. When the donors declined to withdraw their donations, the Alaska office took steps to have the 132 hours of donated leave retroactively substituted for 132 hours of leave without pay charged to Mr. Gibson earlier that year.

As a result of the retroactive substitution of donated leave, Mr. Gibson's beneficiary received \$3,361.91 for these 132 hours as unpaid compensation due and payable to Mr. Gibson upon his death. The agency now questions the propriety of this retroactive substitution of donated leave for leave without pay and the resulting payment of compensation.

OPINION

The Temporary Leave Transfer Program for fiscal year 1988 was authorized as a 1-year experimental program under which the unused, accrued annual leave of officers or employees of the federal government could be transferred for use by other officers or employees who needed such leave because of a personal emergency. See Pub. L. No. 100-202, 101 Stat. 1329, 1329-430 (1987). Although the Temporary Program was authorized for only 1 year, a similar program has been established as a 5-year experiment under the Federal Employees Leave Sharing Act of 1988, Pub. L. No. 100-566, 102 Stat. 2834 (1988).

Under regulations issued by the Office of Personnel Management (OPM), annual leave donated under the Temporary Leave Transfer Program may be substituted retroactively for periods of leave without pay or used to liquidate an indebtedness for advanced annual or sick leave. 53 Fed. Reg. 7327 (1988) (to be codified at 5 C.F.R. 630.906(d)). However, when the personal emergency affecting a leave recipient terminates, no further requests for transfer of annual leave to the leave recipient may be granted and any unused donated leave remaining to the credit of the leave recipient must be restored to the leave donors. 53 Fed. Reg. 7327 (1988) (to be codified at 5 C.F.R. 630.909(c)).

The personal emergency affecting a leave recipient ends when the leave recipient's employment is terminated by the

agency that approved the application. 53 Fed. Reg. 7327 (1988) (to be codified at 5 C.F.R. 630.909(a)(1)). Thus, it appears, from the regulations cited above, that the purpose of the Temporary Leave Transfer Program was to provide income protection to a current employee during the period of personal emergency for which the application was approved. It further appears that the program was not intended to benefit an employee after the personal emergency ends or after the employee is separated from the federal service.

Mr. Gibson's employment terminated on July 14, 1988, the date of his death, and, based on the above-cited regulations, Mr. Gibson's personal emergency under the Temporary Leave Transfer Program also ended on July 14, 1988. At that point, according to the regulations, the agency should have restored the 132 hours of unused leave donated to Mr. Gibson before his death to the leave donors. The regulations do not provide for offering the leave donors an option whether to have their leave restored after the leave recipient's personal emergency has ended.

Therefore, we find that the retroactive substitution of donated leave for leave without pay after Mr. Gibson's death was improper. In addition, the payment of compensation in the amount of \$3,361.91, resulting from the retroactive substitution, was erroneous. However, the erroneous payment of compensation may be subject to waiver under the provisions of 5 U.S.C. § 5584 (1982 & Supp. IV 1986) and 4 C.F.R. parts 91 and 92 (1988).

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